



APPROVED MINUTES
SCOTTSDALE BOARD OF ADJUSTMENT
Community Design Studio
7506 E. Indian School Road
Scottsdale, AZ
November 5, 2003
6:00 PM

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Jennifer Goralski, Board Member
Carol Perica, Board Member
Neal Waldman, Board Member
Laurel Walsh, Board Member

ABSENT: Norman Sands, Board Member

STAFF: Janis Villalpando
Kurt Jones
Bill Verschuren

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

APPROVED 03-03-04

APPROVAL OF MINUTES

1. **September 27, 2003** (Remote Site Study Session Minutes)
2. **October 8, 2003** (Study Session and Regular Minutes)

Vice Chair Kuhstoss moved approval of the October 8, 2003 minutes. Board Member Perica seconded the motion. Board Member Walsh made the following corrections:

Page 17, last sentence. Change "We limit our review of the accessory issue" to, "We limit our review to the accessory issue."

Page 46, second paragraph. Change "we respond to all of our citizens" to. "It responds to all of its citizens."

Vice Chair Kuhstoss moved approval of the October 8, 2003 minutes as amended. Board Member Perica seconded the motion. Chair Vail called for the vote. The minutes were approved as amended by a vote of six (6) to zero (0).

Vice Chair Kuhstoss moved approval of the September 27, 2003 minutes. Board Member Perica seconded the motion. The motion passed unanimously by a vote of six (6) to zero (0).

Board Member Walsh amended the October 8, 2003 Study Session minutes as follows:

Page 5, second paragraph of Commissioner Walsh's comments, line 7. Change "if everybody knows the rules that we have plenty of time" to, "if everybody knew the rules, that we had had plenty of time"

Vice Chair Kuhstoss moved approval of the October 8, 2003 Study Session minutes as amended. Board Member Perica seconded the motion. Chair Vail called for the vote. The minutes were approved as amended by a vote of six (6) to zero (0).

CHAIR VAIL announced with regret that this would be Board Member Walsh's last meeting on the Board of Adjustment. He stated that Ms. Walsh had been the former Chair and had served on the Board for six years. He commended her for her service to the City of Scottsdale both on the Board of Adjustment and in many other areas. He pointed out her involvement and commitment to the passage of the ESL Ordinance. He also acknowledged the mentoring he had received from Board Member Walsh while he served as Vice Chair of the Board. Chair Vail presented a plaque to Board Member Walsh as a token of the Board's appreciation.

REGULAR AGENDA

3. **9-BA-2003 Rafi Residence**, request by Mike & Tara Rafi, applicant/owner, for a variance from Zoning Ordinance Article VI. Section 6.1070G.1.i., for a 1+/- acre parcel located at 10201 N 124th Street with Single Family Residential, Environmentally Sensitive Lands (R1-43, ESL) zoning.

MR. JONES presented the case per the staff packet. He noted that the applicant was requesting approval for a variance to allow non-indigenous plants with a capability of exceeding 20 feet in height in an area not within an enclosed yard. He explained that the requested non-indigenous plants were date palms, with a potential height of 40 to 60 feet.

MR. JONES reviewed the four criteria and indicated that it was staff's interpretation that the criteria had not been met.

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment. Chair Vail asked the applicant to present her case.

MS. RAFI addressed the Board and read a letter in which she outlined a series of the events prior to the landscaping of her home. She described the lengthy three-month planting process for the palms trees and subsequent notice of violation. She noted that many of her neighbors have palm trees and non-indigenous plants, many of which are on new construction sites. She explained that she was unable to obtain information from the City as to the effective date of the ordinance prohibiting her palm trees, and that she was told that grass was the only landscaping prohibition. Ms. Rafi stated that she has the support of sixteen of her neighbors and that the front and east side of her home has been dedicated to NAOS and ESLO.

(Chair Vail opened public comment.)

MR. BARRY DALE, counsel for the applicant, spoke to the four criteria and referred to the voluntary planting of indigenous plants by the Rafi's. He also referred to numerous other residences with palm trees over 20 feet in height. He indicated that selective enforcement had taken place with regard to this ordinance and that it appeared that the Rafis had been singled out for denial of their palm tree request. Mr. Dale noted that Ms. Rafi made diligent inquiry to the City and that she hired a reputable landscaper to plant the trees. He added that the landscaper had no knowledge of any ordinance prohibiting the planting of the palm trees in the subject area.

MR. GARY DUFRESNE, 10301 N. 124th Street, Scottsdale, read a statement to the Board relating to a notice of violation for unapproved ground cover and non-indigenous plants on his property. He noted the significant financial and emotional hardships involved in his case and indicated that after taking his case to Scottsdale

City Court, he was ordered to remove the unapproved ground cover and non-indigenous plants. Mr. Dufresne stated that he was strongly opposed to granting the variance. He explained that his situation was similar to the applicants and he was simply told by the Court "the code is the code."

(Chair Vail closed public testimony.)

The applicant and Mr. Dale responded to Board Member questions regarding the date of the planting of the trees, and clarification of the portion of land dedicated to the City as NAOS. Mr. Jones clarified that the land was an easement and was not deeded to the City. Ms. Rafi pointed out the many new palm trees in the area both in newly constructed areas and remodeled properties as well.

CHAIR VAIL remarked that he would be terribly disappointed in a landscaper working in Scottsdale not being aware of the highly publicized ESLO restrictions. Chair Vail asked for Board Member discussion.

BOARD MEMBER WALDMAN noted that the applicant's home was indeed an asset to the neighborhood, but stated that he felt compelled to uphold the ordinance.

BOARD MEMBER WALSH stated that she felt it was very unfortunate that the ordinance had not been evenly applied, but that City Council has stressed the importance of applying the ESL ordinance. She expressed dismay that the contractor did not comply with what was clearly adequate notice, but that she must vote to deny the variance.

CHAIR VAIL acknowledged the beauty of the home and the palm trees, but stated that he could not justify the four criteria.

VICE CHAIR KUHSTOSS concurred and expressed concern that there was notice stated on the site plans. She added that it was not within the Board's purview to grant exceptions to the ESLO.

BOARD MEMBER PERICA concurred as well, noting that the rationale that others in the neighborhood were in violation was not a viable argument.

BOARD MEMBER GORALSKI agreed and mentioned that the ordinance was very clear with regard to non-indigenous plants.

Vice Chair Kuhstoss moved to deny the requested variance. Board Member Walsh seconded the motion. The appeal was denied unanimously by a vote of six (6) to zero (0).

CHAIR VAIL advised the Board that Board Member Waldman was recusing himself from discussion and action on the next agenda item.

BOARD MEMBER WALDMAN left the meeting.

4. **10-BA-2003 Ancala Commons**, request by Westar Holdings LLC, applicant, Chang Jean-I owner, for a variance from Article V, Section 5.2204.D height restrictions and Section 5.2204.E.2.a. setback requirements for a 3.9+/- acre parcel located at 11411 N 114th Street with Commercial Office (C-O) zoning.

MR. VERSCHUREN presented the case per the staff packet. He indicated that staff's findings suggested justification with regard to the four criteria.

MR. BRIAN SILVESTER, Patrick Hayes Architecture, spoke on behalf of the applicant, and noted that the property directly to the east is RI-43 residential, owned by the Federal government and undevelopable. He reiterated that in the event the residential zoning had not been imposed adjacent to this commercial property, the setback and height restriction would not be required for the applicant property. He also commented on the proximity of the Central Arizona Project canal.

CHAIR VAIL remarked that this item was perfunctory in nature and asked Legal Counsel if a motion was in order at this time without further discussion. Ms. Villalpando stated that that would be acceptable.

VICE CHAIR KUHSTOSS observed that the Board has historically treated the canal as an unusual circumstance and granted variances in that context. **Based on that history, Vice Chair Kuhstoss moved to grant both variances to the applicant. Board Member Perica seconded the motion. The motion passed unanimously by a vote of five (5) to zero (0).**

CHAIR VAIL noted that discussion of Board procedures would be delayed pending the appointment of the new Board Members.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:10 PM.

Respectfully submitted,

"For the Record" Court Reporters